ARTER & HADDEN
ATTORNEYS AT LAW
founded 1843

Cleveland
Columbus
Dallas

1801 K Street, N.W. / Suite 400K
Washington, D.C. 20006-1301
202/775-7100 *telephone*
202/857-0172 *facsimile*

Irvine
Los Angeles
San Francisco

Writer's Direct Dial Number:
(202) 775-7960

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May 16, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY
William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Rule Making Comments
1996 Act Local Competition Implementation
CC Docket No. 96-98

Dear Mr. Caton:

On behalf of VarTec Telecom, Inc., Transtel, Telephone Express, CGI, and CommuniGroup Inc. of Mississippi there is transmitted herewith an original and sixteen (16) copies of their comments in response to the Commission's Notice of Proposed Rule Making, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182, released April 19, 1996. Sufficient copies are being filed so that each Commissioner may receive an individual copy.

Please direct any questions regarding this filing to undersigned counsel.

Sincerely yours,

James U. Troup
L. Charles Keller

Enclosures

cc: Ms. Janice Myles, CCB (by hand)
Int'l Transcription Svc. (by hand)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

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JOINT COMMENTS OF VARTEC TELECOM, INC., TRANSTEL, TELEPHONE EXPRESS, CGI and COMMUNIGROUP INC. OF MISSISSIPPI

James U. Troup
L. Charles Keller
Their Attorneys

ARTER & HADDEN
1801 K Street, N.W., Ste. 400K
Washington, D.C. 20006
(202) 775-7100

May 16, 1996

SUMMARY

VarTec Telecom, Inc., Transtel, Telephone Express, CGI, and CommuniGroup Inc. of Mississippi ("Commenters") are competitive long distance carriers. The Commission's rules implementing Sections 251 and 252 of the 1996 Act will determine whether Congress's goal of increasing competition in both the local exchange and the interexchange marketplaces will actually be realized. Congress's plan for the introduction of competition recognizes that competitors are unlikely to be able to construct fully redundant networks of their own. Congress has therefore required incumbent LECs to make their services available for resale and their network elements available on an unbundled basis.

The Commission should ensure in its implementing regulations that incumbents do not thwart competition by providing competitors with resale services or unbundled elements of lower quality than those the incumbent itself uses to provide telecommunications services to subscribers. To avoid the need for excessive regulation in this area, the Commission should simply require state commissions not to approve interconnection or resale agreements unless they contain concrete standards for the incumbent's performance.

Competitors' success will also depend on their ability to acquire all the network elements they need. To that end, the Commission should identify billing and collection services, accurate databases, and white page listings as network elements in its implementing regulations.

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JOINT COMMENTS OF
VARTEC TELECOM, INC., TRANSTEL, TELEPHONE EXPRESS, CGI and COMMUNIGROUP INC. OF MISSISSIPPI

To: The Commission

VarTec Telecom, Inc., Transtel, Telephone Express, CGI, and CommuniGroup Inc. of Mississippi (collectively, "Commenters"), by counsel, hereby file their joint initial comments in response to the FCC's Notice of Proposed Rule Making in the above-referenced proceeding.[1/]

I. Introduction

Commenters are all small, competitive long distance carriers. Because the provisions of Sections 251 and 252 of the Act will have a profound effect on Commenters' abilities to provide long distance and, potentially, local service, Commenters have a strong interest in the outcome of this proceeding.

Although long distance services have been the only area where any significant competition has existed in the telephone industry, Commenters believe that long distance competition could expand dramatically if the Commission properly implements the pro-competitive mandate of the Telecommunications Act of 1996 (the

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1/ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 96-182 (released April 19, 1996) (the "Notice").

"1996 Act").[2/] The provisions of Sections 251 and 252 also hold the promise of allowing long distance providers to begin competing with incumbent local exchange carriers ("LECs") to provide local telephone services that can be bundled with their long distance services.

The 1996 Act's promise of increased competition will be a hollow one, however, if the FCC fails to implement its provisions in a manner that allows competitors access to the types of services at a level of quality necessary to compete effectively. In order to ensure such access, the FCC should take the steps it can to ensure that interconnection agreements with incumbent providers contain concrete performance standards with penalties for non-compliance. The FCC should also favor a broad, inclusive definition of "network elements" that includes billing and collection services, accurate databases, and white page listings among the network elements that incumbent LECs must unbundle and make available on a nondiscriminatory basis.

II. Interconnection Agreements Should Not Be Approved Without Concrete Performance Standards and Penalties for Non-Compliance.[3/]

Section 251 of the 1996 Act seeks to ensure that interconnection, unbundled access to network elements, and resale services are available to competitive telecommunications service providers on a nondiscriminatory basis. Such access is to be

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[2/] Pub. L. No. 104-104, 110 Stat. 56 (1996).

[3/] The comments in this section respond to parts II.A. and II.B.2. of the Notice.

secured pursuant to contracts reached through voluntary negotiations, and approved by state commissions.

Given the importance of new competitors' access to these items, the Commission has wisely proposed in the Notice to adopt "explicit rules to address those issues that are most critical to the successful development of competition, and with respect to which significant variations would undermine competition."[4/] Among these rules should be a requirement that interconnection agreements include concrete performance standards with sanctions for non-compliance.

Although the 1996 Act's interconnection and unbundling requirements should make available to competitors the infrastructure necessary to participate in the telecommunications marketplace, this infrastructure is only meaningful if it is of comparable quality to the infrastructure used by the incumbent itself. A competitor's service could easily be undermined if the incumbent could ensure that the competitor's service quality would never be as high as the incumbent's. This concern not only affects the potential viability of competition as envisioned in the 1996 Act, but also implicates the quality of service available to the public, which is the first universal service principle listed in Section 254(b).

Indeed, at least one competitive access provider has catalogued instances of such abuse by various Bell operating

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4/ Notice at 11, para. 27.

companies ("BOCs").[5/] Also, at least one of the Commenters has received name and address information from a BOC's database that was substantially inferior to the name and address information accessible by the BOC itself from a different database.

Because the 1996 Act explicitly intended to create a "pro-competitive, de-regulatory national policy framework,"[6/] Commenters do not propose that these issues be addressed directly by rule. Rather, the quality of interconnection and network elements can best be assured by requiring explicit performance standards in all interconnection agreements. This requirement can best be enforced through a Commission rule prohibiting the states from approving any interconnection agreement that fails to include the Commission's specific performance standards.

Such a rule would be consistent with the FCC's mandate under Section 251 to ensure local competition. Although state commissions have authority to approve interconnection agreements under Section 252, as the Commission has observed, "states must implement any rules we establish under section 251."[7/] Because a lack of performance standards could completely vitiate the goals of Section 251, such a requirement would be consistent with the FCC's mandate.

5/ See Performance Standards Key to Interconnection, white paper report of Teleport Communications Group (April 1996).

6/ 1996 Act, Conference Report.

7/ Notice at 13, para. 34.

The Commission's rule should outline specific performance standards that must be included in an interconnection agreement before a state commission may approve it. These standards should require the incumbent to make signalling networks and databases available to requesting carriers that are equal in quality and type to those used by the incumbent itself. Databases should not be deemed equal in quality and type unless they provide the same accuracy and information detail, are updated with the same frequency, and provide equivalent access time and time for query response.

III. The FCC's Implementing Regulations Should Ensure the Unbundling of All Network Elements Necessary to Ensure Competition.[8/]

In Sections 251 and 252 of the 1996 Act, Congress sought to encourage both local and interexchange competition by requiring incumbent LECs to make network elements available "on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[9/] The Commission has the duty under the Act to "determin[e] what network elements should be made available."[10/] In the Notice, the Commission has acknowledged this duty, suggested a number of

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[8/] These comments respond to part II.B.2.c. of the Notice.

[9/] 1996 Act, § 251(c)(3).

[10/] Id. at § 251(d)(2).

network elements that should be made available, and requested comment on its proposals.[11/]

To ensure full local and long distance competition as envisioned in the 1996 Act, the Commission should require the unbundling of all network elements necessary to allow competition in the local exchange. Such network elements should include billing and collection services, access to accurate databases, and white page listings. Such services constitute network elements as defined by the 1996 Act, and their availability is central to new entrants' ability to provide competitive services.

Sections 251 and 252 represent an acknowledgement that incumbent LECs have used their monopoly positions to create a telecommunications infrastructure; Congress's intent with the 1996 Act was to make this infrastructure available, piecemeal as necessary, to competitors until the competitors can put their own networks in place. Billing and collection capabilities and accurate databases are part of this telecommunications infrastructure, and should therefore be unbundled and made available on a nondiscriminatory basis.

The 1996 Act defines a "network element" as

> a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used

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11/ Notice at 28-39, paras. 83-116.

in the transmission, routing, or other provision of a telecommunications service."[12/]

By "billing and collection services," Commenters refer to the tracking of billing data, the generation and mailing of bills, and the collection of remitted funds. These services constitute a network element under the 1996 Act's definition. Billing and collection is clearly a "facility used in the provision of a telecommunications service," as no services can be provided unless the fees for their provision can be collected. Moreover, billing and collection services are a "function" or "capability" that is "provided by means of such facility or equipment." Billing and collection facilities are part of the telecommunications service; thus, the billing and collection function is a network element as defined by the statute.

The 1996 Act further provides that, in identifying network elements that should be made available, the Commission should consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[13/] This test requires the incumbent LECs to make access to unbundled billing and collection functions available to competitors at just, reasonable and non-discriminatory rates. Commenters will be unable to enter the local exchange service market unless the incumbent

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12/ 1996 Act, sec. 3(a)(2)(45).

13/ 1996 Act, § 251(d)(2). See also Notice, para. 93, item (5).

LECs allow them to purchase the billing and collection function on an unbundled basis.

Commenters, like many smaller IXCs and competitive LECs, lack the resources and capability to provide their own billing and collection services. Unless the Commission mandates that the incumbent LECs make these services available to competitors on a non-discriminatory basis and at just and reasonable rates, the incumbents will be able to squelch competition by denying access to their billing and collection functions.

This barrier to vibrant local service competition demonstrates not only the importance of unbundling these functions, but also their character as network elements. Billing and collection are part of the network infrastructure controlled by incumbent providers that is necessary for the provision of telecommunications services. With the 1996 Act, Congress sought to define all aspects of this infrastructure as "network elements" so they could be made available on an unbundled basis. Billing and collection functions and capabilities are a network element, and should be unbundled and made available at nondiscriminatory prices set to recover long-run incremental costs.

Another barrier to competitive entry that should be identified as a network element and unbundled is the printing of the competitor's subscribers in the incumbent's white page directory listings. This is part of the telecommunications service incumbent LECs provide and therefore fits within the 1996 Act's definition of a network element. If incumbents were allowed to exclude

competitors' subscribers from their white page directories, the incumbents would maintain a significant marketing advantage for both residential and business customers. Just as prospective competitors cannot deploy a fully redundant network of their own, competitors lack the resources and information to provide a competing, comprehensive directory. Congress included white page listings of competitors' subscribers in the incumbents' directories as part of the "competitive checklist" of items that is a prerequisite to a BOC's provision of in-region interLATA service.[14/] Because of the importance of white page listings to enabling competitive entry into the local exchange service market, the Commission should mandate such listings as an unbundled element under Section 251(c)(3). National standards for nondiscriminatory provision of listings should also be adopted to prevent incumbent LECs from identifying competitor's customers with inferior type or segregating other providers' listings in such a way that they are less accessible to directory users.

Accurate subscriber databases are also of crucial importance to competitive providers, as Commenters experience in the IXC context demonstrates. Calls using the Commenters' networks are identified using the Automated Number Identification ("ANI") database. Commenters record the ANI information and forward it periodically to the incumbent LEC, which converts the number information into subscriber name and address information using its Billing Name and Address ("BNA") database. Based on this

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[14/] 1996 Act, sec. 151, § 271(c)(2)(B)(viii).

information, the incumbent LEC bills the subscribers for their usage and remits the funds to the IXC. Access to the LEC's BNA database is therefore crucial for the Companies' business, as it is the only accurate source of information regarding their own customers and potential customers.

Because the Companies' customers regularly pay their bills, the Companies are certain the LECs possess a BNA database with near-100 percent accuracy. Nevertheless, when the Companies have requested BNA database information from various BOCs, they have received databases that were only about 60 percent accurate.

The hindrance this places on the Companies' current long distance business illustrates the severe impediment that lack of access to the LECs' accurate databases would place on competitive entry into the local market. The FCC's implementing regulations should therefore require incumbent LECs to offer BNA databases as an unbundled element which are the same as or equally accurate as the databases used by the LEC itself.

At the same time, databases are only useful to the extent they are affordable. Because Section 251(c) requires network elements be made available on just, reasonable, and nondiscriminatory terms, the Commission should also adopt national pricing standards for databases. The standard should be based on a uniform, external standard, such as the price of similar databases provided by non-LECs, such as the Donnelly organization. While the Companies recognize that a more accurate database is more valuable, the difference in price should not be disproportionate.

IV. Conclusion

The 1996 Act rightly acknowledges that the history of government-supported communications monopolies can only be remedied with a national policy framework requiring liberal interconnection rights and access to unbundled network elements. Without access to the incumbents' networks, local exchange service competition will remain only a dream. The competitive promise of the 1996 Act can only be realized if the FCC acts to ensure that competitors have readily-enforceable, contractual rights to interconnection and network elements of adequate quality to prevent the incumbent from making the competitor's service unattractive to consumers.

WHEREFORE, VarTec Telecom, Inc., Transtel, Telephone Express, CGI, and CommuniGroup Inc. of Mississippi respectfully request that the Commission adopt the proposals made herein.

Respectfully submitted,

VARTEC TELECOM, INC., TRANSTEL, TELEPHONE EXPRESS, CGI, and COMMUNIGROUP INC. OF MISSISSIPPI

By: _____
James U. Troup
L. Charles Keller
Their Attorneys

ARTER & HADDEN
1801 K Street, N.W., Ste. 400K
Washington, D.C. 20006
(202) 775-7100

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